

**ORDINANCE NO. 1440 (2003 Series)**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN LUIS  
OBISPO ADDING CHAPTER 8.14 TO THE SAN  
LUIS OBISPO MUNICIPAL CODE PROVIDING FOR  
THE LICENSURE OF TOBACCO RETAILERS**

WHEREAS, State law prohibits the sale or furnishings of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Penal Code § 308); and

WHEREAS, State law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business & Professions Code § 22956) and provides procedures for onsite sting inspections of tobacco retailers using persons under 18 years of age (Business & Professions Code § 22952); and

WHEREAS, the results of the 2001 California Youth Tobacco Purchase Survey revealed that 17.1% of retailers surveyed statewide sold tobacco products to minors; however, the 2002 local youth purchase survey revealed that 52% of the retailers surveyed in the City of San Luis Obispo sold tobacco products to minors; and

WHEREAS, the California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4<sup>th</sup> 383 (1993) have affirmed the power of the City to regulate business activity in order to discourage violations of state law; and

WHEREAS, State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk but permits the sale of tobacco products from certain vending machines (Business & Professions Code § 22962); and

WHEREAS, the City of San Luis Obispo also prohibits the sale or display of cigarettes through a self-service display in other than adult-only tobacco retail establishments and prohibits public access to cigarettes without the assistance of a clerk; and

WHEREAS, State law prohibits the sale of "bidis" (hand-rolled filterless cigarettes imported primarily from India and some Southeast Asian countries) except in adult-only establishments (Penal Code § 308.1); and

WHEREAS, State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 cigarettes and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Penal Code § 308.3); and

WHEREAS, State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (Educ. Code § 48901(a)); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates. Each year, an estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers (Joseph R. DiFranza, M.D. & John J. Librett, M.P.H., *State and Federal Revenues from Tobacco Consumed by Minors*, 89 Am. J. Pub. Health 1106 (1999)); and

WHEREAS, eighty-eight percent of adults who have ever smoked tried their first cigarette by the age of 18, and the average age at which smokers try their first cigarette is 14½; and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

**SECTION 1.** Chapter 8.14 is hereby added to the San Luis Obispo Municipal Code as follows:

**Chapter 8.14**

**Sections:**

<b>8.14.010</b>	<b>Purpose</b>
<b>8.14.020</b>	<b>Definitions</b>
<b>8.14.030</b>	<b>Requirement For Tobacco Retailer License</b>
<b>8.14.040</b>	<b>Application Procedure</b>
<b>8.14.050</b>	<b>Issuance of License</b>
<b>8.14.060</b>	<b>Display of License</b>
<b>8.14.070</b>	<b>Fees For License</b>
<b>8.14.080</b>	<b>Licenses Nontransferable</b>
<b>8.14.090</b>	<b>License Compliance Monitoring</b>
<b>8.14.100</b>	<b>Suspension or Revocation Of A License</b>
<b>8.14.110</b>	<b>Appeal of Suspension And/Or Revocation</b>
<b>8.14.120</b>	<b>Administrative Fine/Penalties/Enforcement</b>
<b>8.14.130</b>	<b>Severability</b>

**8.14.010 Purpose**

It is the intent of the City of San Luis Obispo, in enacting this Chapter, to discourage violations of laws which prohibit or regulate the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefore.

**8.14.020 Definitions**

The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(b) "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

(c) "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco, including Indian cigarettes called "bidis."

(d) "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, or tobacco products; "tobacco retailing" shall mean the doing of any of these things.

(e) "Licensing Agent" means a City employee designated by the City Administrative Officer to serve in this capacity.

(f) "Enforcement Agency" means the San Luis Obispo Police Department.

(g) "Hearing Officer" means the City employee designated by the City Administrative Officer to serve in this capacity.

**8.14.030 Requirement For Tobacco Retailer License**

It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license pursuant to this Chapter for each location at which that activity is to occur.

No license will be issued to authorize tobacco retailing at other than a fixed location; itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.

No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control): tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.

Licenses are valid for one (1) year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration. The conference of a tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoke-free work place provisions within the San Luis Obispo Municipal Code and Labor Code section 6404.5.

#### **8.14.040      Application Procedure**

(a) Application for a tobacco retailer's license shall be submitted to the Licensing Agent in the name of each Proprietor/Person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Licensing Agent and shall contain the following information:

- (1)      The name, address, and telephone number of the applicant.
- (2)      The business name, address, and telephone number of each location for which a tobacco retailer's license is sought.
- (3)      Such other information as the Licensing Agent deems necessary for enforcement of this ordinance.
- (4)      Whether or not any Proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

#### **8.14.050      Issuance of License**

Upon the receipt of an application for a tobacco retailer's license, the Licensing Agent shall issue a license unless substantial record evidence demonstrates one of the following bases for denial:

- (a)      The application is incomplete or inaccurate; or

(b) The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect pursuant to Section 8.14.100 of this Chapter; or

(c) The application seeks authorization for tobacco retailing in an area that is in violation of City zoning pursuant to Title 17 of this Code or that is unlawful pursuant to any other local, state, or federal law.

#### **8.14.060 Display of License**

Each license shall prominently display the license in a public place at each location where tobacco retailing occurs.

#### **8.14.070 Fees For License**

The fee for a tobacco retailer's license shall be established by resolution of the City Council of the City of San Luis Obispo. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the Licensing Agent.

#### **8.14.080 Licenses Nontransferable**

A tobacco retailer's license is nontransferable. For example, if a Proprietor to whom a license has been issued changes business location, that Proprietor must apply for a new license prior to acting as a Tobacco Retailer at the new location. Or if the business is sold, the new owner must apply for a license for that location before acting as a Tobacco Retailer.

#### **8.14.090 License Compliance Monitoring**

Compliance with this ordinance shall be monitored by the San Luis Obispo Police Department. At least four compliance checks of each Tobacco Retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee.

#### **8.14.100 Suspension or Revocation Of License**

(a) In addition to any other penalty authorized by law, a Tobacco Retailer's license may be suspended or revoked if the City finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this Chapter.

(1) Upon a finding by the City of a first license violation within any five-year period, the license shall be suspended for thirty (30) days.

(2) Upon a finding by the City of a second license violation within any five-year period, the license shall be suspended for ninety (90) days.

(3) Upon a finding by the City of a third license violation within any five-year period, the license shall be suspended for one (1) year.

(4) Upon a finding by the City of a fourth license violation within any five-year period, the license shall be revoked.

(b) A Tobacco Retailer's license shall be canceled if the City finds, after notice and opportunity to be heard, that one of the following conditions exist. The revocation shall be without prejudice to the filing of a new application for a license.

(1) The application is incomplete for failure to provide the information required by Section 8.14.040.

(2) The information contained in the application, including supplemental information, if any, is found to be false in any material respect.

(3) The application seeks authorization for a license for tobacco retailing that is unlawful.

#### **8.14.110 Appeal of Suspension And/Or Revocation**

(a) A decision of the City to revoke or suspend a license is appealable to a Hearing Officer and must be filed with the Hearing Officer at least ten (10) working days prior to the commencement date of the license suspension or revocation. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the Hearing Officer may be appealed to the City Administrative Officer or his or her designee. A decision of the City Administrative Officer or his or her designee shall be the final decision of the City.

(b) During a period of license suspension, the Tobacco Retailer must remove from public view all tobacco products.

#### **8.14.120 Administrative Fine/Penalties/Enforcement**

(a) Any violation of the provisions of this Chapter by any person is a misdemeanor and is punishable as provided in Chapter 1.12, Section 1.12.030 of this Code. Any violation of the provisions of this Chapter by any person is also subject to administrative fines as provided in Chapter 1.24 of this Code.

(b) If the City of San Luis Obispo finds, based on substantial record evidence, that any unlicensed person has engaged in tobacco retailing activities in violation of Section 8.14.030 of this Chapter, the City shall fine that person as follows. Each day that an unlicensed person offers tobacco, tobacco products or tobacco for sale or exchange shall constitute a separate violation and assessed a fine in accordance with Sections 1.12.080 and 1.24.070A. of this Code.

(c) Violations of this ordinance are hereby declared to be public nuisances.

(d) In addition to other remedies provided by this Chapter or by other law, any violation of this ordinance may be remedied by a civil action brought by the City Attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

#### **8.14.130 Severability**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of San Luis Obispo hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.


**SECTION 2.** A summary of this ordinance, together with the names of council members voting for and against, shall be published at least five (5) days prior to its final passage, in The Tribune, a newspaper published and circulated in this city. This ordinance shall go into effect at the expiration of thirty days after its final passage.

INTRODUCED on the 19th day of August, 2003, AND FINALLY ADOPTED  
by the Council of the City of San Luis Obispo on the 2nd day of September, 2003, on the  
following roll call vote:

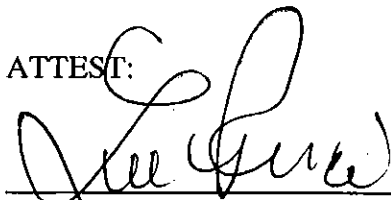
AYES: Council Members Ewan, Schwartz, Settle, Mayor Romero

NOES: Vice Mayor Mulholland

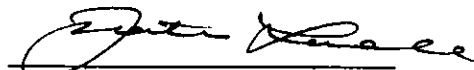
ABSENT: None

  
David F. Romero  
Mayor

ATTEST:

  
Lee Price, C.M.C.  
City Clerk

APPROVED AS TO FORM:

  
Jonathan Lowell  
City Attorney